

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MIGUEL LAMENCA,
JOSEPH SANTOS,
PEDRO MEZA-BUSTAMONTE, }
Appellants, } Nos. 21044-5-6
v.
UNITED STATES OF AMERICA, }
Appellee. }

Appeal From the United States District Court
For the Southern District of California

APPELLANT'S REPLY BRIEF

FILED

MAY 15 1967

WM. B. LUCK, CLERK

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1 IN THE UNITED STATES COURT OF APPEALS
2 FOR THE NINTH CIRCUIT

3 MIGUEL LAMENCA,
4 JOSEPH SANTOS,
5 PEDRO MEZA BUSTAMONTE,
6 v.
7 UNITED STATES OF AMERICA,
8 Appellee.

) Nos. 21044-5-6

9 Appeal From the United States District Court
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11 APPELLANT'S REPLY BRIEF

12 I. Appellants respectfully reiterates and invites the
13 court's attention to arguments raised in their opening brief
14 on behalf of all appellants on the issues of the sufficiency
15 of the evidence and the admission of extra judicial statements.

16 II. The trial court should have ordered the disclosure of
17 the identity of the informant.

18 The government's brief on this issue in substance is
19 that the trial court was correct because one, appellants could
20 not with certainty show what the informant's testimony would
21 be, and two, that even if the informant's identity should have
22 been revealed it was not prejudicial error because the acquittal
23 of MEZA-BUSTAMONTE would only void the conviction of co-appel-
24 lants in the substantive count and that the conspiracy
25 conviction would not fail as a matter of law.

1 (a) As to the first, appellants state that it would
2 be impossible for a defendant to state with certainty what an
3 eyewitness's testimony would be where the very existence of
4 such an eyewitness was unknown to the defendant until the
5 trial was almost completed. Because of the limited nature of
6 the Federal Discovery Rules in existence at the time of this
7 trial there was no way for appellants to have known of his
8 existence until the trial had commenced.

9 (b) As to the second contention, simple logic and
10 common sense would compel the belief that if the eyewitness
11 identified the people who drove the Chrysler automobile as the
12 persons described by appellant MEZA-BUSTAMONTE and corroborated
13 the testimony of appellant SANTOS in any detail, acquittals of
14 all the appellants were substantially probable.

15 It is respectfully submitted that the test to be
16 applied is not whether the prosecution will dismiss a case
17 rather than comply with an order to identify the informant but
18 rather the test is could the eye-witness's testimony be helpful
19 to the defense. (R.T., p. 310-311; Roviaro v. United States,
20 352 U.S. 53 (1956), People v. McShann, 50 Cal. 2d 802; P.2d
21 330 (1958).)

1 CONCLUSION

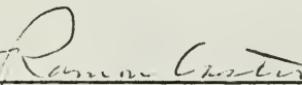
2 For the foregoing reasons, it is respectfully submitted
3 that the decision of the District Court must be reversed.
4

5 Respectfully submitted:

6 SHEELA, O'LAUGHLIN, HUGHES & CASTRO

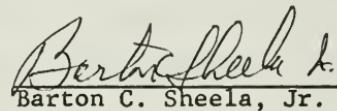
7 By 
8 Barton C. Sheela, Jr., Attorneys
9 for Appellant Santos

10 SHEELA, O'LAUGHLIN, HUGHES & CASTRO

11 By 
12 Ramon Castro, Attorneys for
13 Appellants Lamenca and Meza-Bustamonte

1 CERTIFICATE

2
3 We, Barton C. Sheela, Jr., and Ramon Castro, certify,
4 in connection with the preparation of this brief, we have
5 examined Rules 18 and 19 of the United States Court of
6 Appeals for the Ninth Circuit and that, in our opinion, the
7 foregoing brief is in full compliance with those rules.

8 
9 Barton C. Sheela, Jr.

10 
11 Ramon Castro
12

1 AFFIDAVIT OF SERVICE BY MAIL

2 STATE OF CALIFORNIA } ss
3 COUNTY OF SAN DIEGO }

4 SANDRA J. WILKES, being first duly sworn, deposes
5 and says:

6 That she is a citizen of the United States and a
7 resident of San Diego County, California; that her business
8 address is 1101 U. S. Grant Hotel, San Diego, California;
9 that she is over the age of eighteen years, and not a party
10 to the within action.

11 That on May 12th, 1967, she deposited in the
12 United States mail, San Diego, California, in the within
13 action, Nos. 21044-5-6 MIGUEL LAMENCA, JOSEPH SANTOS, PEDRO
14 MEZA-BUSTAMONTE v. UNITED STATES OF AMERICA,
15 in an envelope bearing the requisite postage, a copy of
16 APPELLANT'S REPLY BRIEF

17 addressed to:

18 Edwin L. Miller, Jr.
19 United States Attorney
20 Southern District of California
21 332 United States Courthouse
22 325 West "F" Street
23 San Diego, California 92101

24 at which place there is a delivery service by United States
25 mails from said post office

26 _____
27 Sandra J. Wilkes
28 Sandra J. Wilkes

SUBSCRIBED and SWORN to before me

HELEN K. TEAGUE
My Commission Expires Jan. 30, 1970

this 12th day of May, 1967.

Helen K. Teague
Notary Public in and for said State and County.

